

REMARKS/ARGUMENTS

Claims 1-10 are pending in the application. Claims 1, 6 and 8 have been amended.

Claim 1-5 are objected to because of informalities. Claim 1 has been amended changing --attachments-- to "attachment".

Anticipation requires that each and every element of the claimed invention be described, either expressly or inherently, in a single prior art reference. *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1327, 58 U.S.P.Q.2d 1545, 1552 (Fed. Cir. 2001); *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, anticipation under section 102 is only valid when a reference shows exactly what is claimed; where there are differences between the references disclosures and the claim, a rejection must be based on obviousness under Section 103. *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989).

Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 102 (b) as being anticipated by Malless, Jr. USPN 4,447,927.

Claims 1, 2, 5, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by McDermott, USPN 5,853,209.

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Chisholm, USPN 4,640,540.

Claims 1, 2, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Morton, USPN 2,677,840.

Claims 1-10 are rejected under 35 102(e) as being anticipated by Nicollette, US Pat. App. Publication No. 2001/0025393.


Claims 1,5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kreiser, USPN 5,435,612.

Claims 1,6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, USPN 4,848,818.

Claims 1,4-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason, USPN 5,988,715.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malless, Jr. USPN 4,447,927 in view of Beers, Jr. et al., USPN 6,393,646. As amended Malless and Beers do not teach all of the claim limitations.

Applicant respectfully traverses the rejections and requests reconsideration. As currently amended, among other differences, none of the cited art either alone, or in combination discloses:



a scooping head comprising

a blade end having a concave face and a convex back,
said blade end having a longitudinal axis, and

and a head attachment end having a longitudinal axis,
said handle longitudinal axis being substantially parallel to said
blade end longitudinal axis, said handle attachment end and
said blade end connected in a manner allowing said blade end
to fit up and over a gutter.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02301US0 from which the undersigned is authorized to draw.

Application No.: 09/964,312

Docket No.: HO-P02301US0

Dated: *SEPT. 26, 2003*

Respectfully submitted,

By 

Edward D. Steakley

Registration No.: 47,964

FULBRIGHT & JAWORSKI L.L.P.

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

(713) 651-5423

(713) 651-5246 (Fax)

Attorney for Applicant